

EXHIBIT 14

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

TRANSCRIPT OF DISCOVERY HEARING
BEFORE HONORABLE DEREK T. GILLILAND
UNITED STATES MAGISTRATE JUDGE

APPEARANCES ON NEXT PAGE.

Transcription Company: Liberty Transcripts
7306 Danwood Drive
Austin, Texas 78759
(847) 848-4907
www.libertytranscripts.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES VIA ZOOM TELECONFERENCE:

For the Plaintiff:

Steckler Wayne Cherry & Love
By: MARK D. SIEGMUND, ESQ.
8416 Old McGregor Road
Waco, Texas 76712

Kasowitz Benson & Torres, LLP
BY: HEATHER S. KIM, ESQ.
DARCY L. JONES, ESQ.
333 Twin Dolphin Drive, Suite 200
Redwood Shores, California 94065

Kasowitz Benson & Torres, LLP
BY: LEA DARTEVELLE ERHEL, ESQ.
1633 Broadway
New York, New York 10019

For the Defendant:

Finnegan, Henderson, Farabow, Garrett
& Dunner LLP,
BY: BRADFORD CHRISTOPHER SCHULZ, ESQ.
1875 Explorer Street, Suite 800
Reston, Virginia 20190

Finnegan, Henderson, Farabow, Garrett
& Dunner LLP,
BY: ALEXANDER "ZAN" NEWKIRK, ESQ.
901 New York Avenue, NW
Washington, DC 20001

INDEX

	<u>PAGE</u>
Case called	4
Court Rulings on Discovery Disputes	28
	49
End of Proceedings	50
Certificate of Transcriber	50

1 WACO, TEXAS, THURSDAY, MAY 12, 2022, 1:36 P.M.

2 THE COURT: All right. Good afternoon everybody. I
3 understand we're here on a discovery dispute with two issues.
4 And so I'm going to ask Ms. Copp to call the case, please.

5 THE CLERK: Yes, Your Honor.

6 Calling Case Number WA:20-CV-487, 488, 489, 490, 491,
7 492, 493, 494, 495, 496, and 497, styled WSOU Investments, LLC,
8 v. ZTE Corporation, *et al.*, called for a discovery hearing.

9 THE COURT: All right. Could I get an announcement
10 from plaintiff?

11 MR. SIEGMUND: Good afternoon, Your Honor. This is
12 Mark Siegmund with Steckler Wayne Cherry & Love for plaintiff
13 Brazos Licensing and Development. With me today are my
14 colleagues, Heather Kim, Darcy Jones, and Lea Dartavelle. And
15 Ms. Kim and Ms. Dartavelle will be the main speakers today,
16 Judge.

17 THE COURT: Very good. Well, it's good to see you,
18 Mr. Siegmund, Ms. Kim, Ms. Dartavelle.

19 MR. SIEGMUND: Good to see you, too.

20 THE COURT: And then could I get announcements from
21 Defendant?

22 MR. SCHULZ: Yes, Your Honor.

23 This is Bradford Schulz from Finnegan Henderson on
24 behalf of ZTE Corporation. I'll be doing the primary arguing
25 for ZTE Corporation, but also with me is Zan Newkirk. And I'd

1 like to mention that this is my first time, I believe it's
2 Zan's first time, before you. So it's an honor.

3 THE COURT: Good deal. Well, welcome, Mr. Schulz and
4 Zan. Good to see you, Mr. Schulz. I look forward to hearing
5 the argument. I see Zan's name, so good to see both of you in
6 the court virtually at least today.

7 The first issue I guess it appears to be WSOU's
8 motion to compel regarding the 30(b) (6) depos. I guess we'll
9 call it a motion to compel versus motion for protective order.
10 And so with that, why don't we start with the plaintiff.

11 MS. KIM: Thank you, Your Honor. I would like to
12 note for the Court that we may be sharing some confidential
13 documents. I noticed a couple of public attendees, so right
14 before we go into that or disclose any of that, I'll just ask
15 them to step away.

16 THE COURT: Okay. Yeah, give us plenty of hearing.
17 We're on what's our public Zoom link for the hearing. Just for
18 future reference, too, if we have a hearing and you think we
19 may get into confidential stuff, we have a separate closed link
20 that we can use where we have a little more control.

21 So this one, give us a heads up before you put up
22 anything confidential or get into something confidential, and
23 we'll see if we can somehow move people out of the Zoom link to
24 maintain confidentiality. And if we don't, we'll figure out a
25 way around it if it even means reconvening on the private link.

1 MS. KIM: Thank you, Your Honor.

2 Yes, our dispute chart, the first issue here is our
3 motion to compel ZTE to provide all 30(b)(6) designations and
4 tender its witnesses before the close of fact discovery which
5 is currently set for June 17th, so about a month from today.

6 Before I get into any sort of argument, Your Honor,
7 do you have any questions for me?

8 THE COURT: I do not at this point.

9 MS. KIM: Okay. Well, in addition to our briefing,
10 we'd just like to make a couple of other notes. We've been
11 asking ZTE for their dates and designations for the 30(b)(6)
12 notices we served on them since November, so it's been about
13 six months or so. Originally, they had given us -- in their
14 responses to our 30(b)(6) notice, they would give us witnesses
15 and designations on all topics.

16 My understanding before my firm Kasowitz came on to
17 the case was there was going to be maybe one witness and then
18 maybe two witnesses. As of last month, I think it was maybe
19 going to be five witnesses with one TBD. Now it looks like
20 maybe four witnesses. So the target of how many witnesses and
21 what their designations are keep shifting. We still have no
22 designation for any of the marketing topics, for example.

23 It seems like we have hopefully solidified the
24 technical topics that we've served on ZTE. So we're asking
25 Your Honor to please make ZTE serve their designations and

1 provide the identities of their witnesses in the next seven
2 days if possible.

3 These cases were filed in June 2020, so they've been
4 pending for almost two years. Due to several venue fights
5 we've had, the latest of which was denied by the Federal
6 Circuit on ZTE's petition for writ of mandamus last week. I
7 think in addition to that, ZTE seems to be trying to delay
8 these cases even further. They contend that they've applied
9 for visas to be able to take these depositions.

10 I understand from ZTE's counsel's correspondence and
11 meet and confers that they're trying to go to Macau where they
12 allow remote depositions to prep and defender their witnesses
13 in person. As you see in our briefing, Your Honor, there's no
14 requirement that counsel has to attend in person. Since COVID
15 hit, everything's been done remotely. Even this hearing, Your
16 Honor, is on a remote basis. Markman hearings, there have even
17 been jury -- or trials, sorry, bench trials on remote basis.
18 So there's no need for counsel to be present.

19 We also want to note that the ZTE's cases that they
20 cite -- I think they cited about six of them or so -- first
21 off, the Inventus case held that depositions should proceed in
22 Macau and noted that in the last 13 years -- and this case
23 issued I think in 2020 or 2021 -- China has allowed only one
24 deposition to be taken and that's in 13 years. And that
25 favored against requiring compliance with the Hague.

1 The Antares case, in that case, the court did not
2 hold that counsel cannot attend physically. It only held that
3 the 30(b) (6) deposition at those particular depositions -- and
4 this was during the pandemic era, as well, that counsel could
5 attend physically with the witness, not that it had to.

6 And then the Maxell case, which issued out of this
7 Court before Judge Albright last year, in that case, that dealt
8 with jurisdictional discovery and documentary discovery, to be
9 exact -- not deposition discovery. And I'd like to note that
10 none of the other ZTE cases deal with China and then the cases
11 that even ZTE cites in support of having us go through the
12 Hague to have the depositions of its 30(b) (6) witnesses, none
13 of those cases held that compliance with the Hague is necessary
14 or required.

15 We really do appreciate ZTE trying to get these
16 depositions scheduled. I understand the undertaking with
17 having to have the witnesses come up to Macau, which I think is
18 about an hour or two train ride from where they are in China.
19 And with that, we understand that it takes about 60 days. With
20 fact discovery closing in the next month, we are agreeable to
21 extending that date out a little bit so that we can get the
22 discovery complete that we need.

23 There are also a few other discovery items you'll
24 hear about later today from my colleague Lea on documents and
25 rog requests which, of course, we would like to have those in

1 hand before the depositions proceed, as well.

2 Just a couple of other notes, Your Honor, one of them
3 being the time allotted for these depositions. All of them
4 will be translated. I'm sure Your Honor has in your practice
5 dealt with translated depositions. They take a really long
6 time compared to just being able to speak and have a regular
7 deposition. So we were asking for a 50 percent increase in the
8 seven-hour allotment per witness, which is standard under the
9 federal rules. So a seven-hour deposition would be -- plus 50
10 percent would be 10-1/2 hours.

11 So we're asking ZTE to also make their witnesses
12 available on two consecutive days so that it is not so
13 exhausting for all involved to sit there for -- with breaks and
14 lunch a potentially 13- to 14-hour day.

15 THE COURT: Okay. Let me ask you, Ms. Kim, did --
16 have you gotten any of the depositions of anybody up to this
17 point?

18 MS. KIM: No, Your Honor. Not a single one.

19 THE COURT: Okay. And so without the depositions, I
20 guess, there's no way to be prepared to try the cases?

21 MS. KIM: Not that I'm aware of, Your Honor. I don't
22 think I could, no.

23 THE COURT: Okay. Let me hear from ZTE on this.

24 MR. SCHULZ: Right, Your Honor.

25 So the issues really come down to three main points

1 and all along we've been pushing for. We've been trying to
2 schedule these depositions through the federal and civil
3 procedure, but there seems to be a dynamic whether this should
4 proceed through the Federal Rules of Civil Procedure or through
5 the Hague Convention.

6 And the benefits of the Hague Convention, they help
7 balance these three issues that I'm about to go into. So the
8 three issues are the legality of taking depositions without
9 authority of the Hague or the China Authority, whether that's
10 in China, Macau, or Hong Kong. So the Hague helps balance
11 that.

12 The second point is the COVID's travel restrictions.
13 So I believe Heather has mentioned a few other cases, but the
14 facts here are a little bit different based off of where our
15 witnesses have to travel from. So our witnesses are having to
16 travel from the two main cities that are at issue are Shanghai
17 and Xi'an.

18 Your Honor, you might be familiar with Shanghai.
19 It's completely locked down. You might have seen videos of the
20 citizens there. They're singing out of their balconies and the
21 police forces are telling them to go inside. You might see
22 droned footage of drones flying by telling the citizens to go
23 inside. So they're even struggling just to get day-to-day
24 supplies, food, let alone they're not going to be able to
25 travel to Macau or Hong Kong.

1 So that's one issue is the actual travel issue. From
2 Shanghai, that's either traveling to Macau or back. And then
3 we have a similar issue for Xi'an, the City of Xi'an, where the
4 witnesses from Xi'an will have to quarantine to get into Macau
5 for a few days. But more importantly, when they travel back to
6 Xi'an, they have to quarantine for at least 14 days.

7 In a lot of instances, this quarantining occurs in a
8 government hotel which has somewhat maybe adequate
9 infrastructure, but the main concern is it doesn't have
10 internet in the infrastructure. So Brazos is effectively
11 asking our witnesses to sit in quarantine without internet for
12 possibly two-plus weeks where they aren't able to perform their
13 normal business activities.

14 So that's two weeks where these individuals and their
15 various technical groups are out completely not doing any
16 business. Likely they will have minimum contact with the rest
17 of the ZTE Corporation. So those are some of the travel
18 restrictions just for the witnesses. And then we also have
19 some travel issues for getting our counsel team to these
20 witnesses to help prep them and also prepare them and be there
21 present for the deposition.

22 My colleague across the aisle, Heather, mentioned
23 that there's a language transition -- translation and language
24 barrier. Well, that also complicates the deposition
25 preparation and deposition defense which is why we typically

1 like to have our counsel team there to help in the preparation
2 to help field any of these translation issues, and then also to
3 be present for the deposition.

4 In our experience, this usually goes well in Hong
5 Kong. Because right now, with the COVID restrictions, Hong
6 Kong isn't an option and in some instances, Macau is not even
7 an option because the witnesses can't get out of Shanghai.

8 And then the third issue is the recent September 2021
9 data security law that hinders transferring documents from
10 China because that hinders the whole remote deposition
11 preparation and the remote deposition process itself,
12 especially if our counsel team's not there in China and the
13 documents have to be transmitted.

14 So for that particular case, as Heather indicated,
15 Judge Albright already ruled in the Maxell case to extend
16 discovery based on that issue alone, just for the parties to
17 handle and navigate through the data security law, the
18 September 2021 data security law.

19 So all these three issues, we believe, weigh in favor
20 of proceeding through the Hague Convention because the Hague
21 Convention and the China Authority can help balance all of
22 these three issues. And on top of that, so that's just really
23 one factor in the seven-factor analysis that we put in our
24 brief. And this is based off the Supreme Court case from
25 Aerospatiale that had five factors, and then Texas courts have

1 adopted two more factors.

2 I'm willing to go through those factors one by one,
3 Your Honor. We briefly addressed them in our dispute chart.
4 It's kind of the point where it's not really sufficient to
5 brief these in 500 or 1,000 words, so we do maintain that if
6 Your Honor would care to have more arguments, that it would be
7 appropriate to have full motion to compel briefing, if that's
8 the way we're styling this current discovery dispute, just
9 because the text of each factor alone is almost 100 or some
10 words.

11 But I'm willing to go through each factor right now
12 if you have any questions. Otherwise, I can -- it sounds like
13 you do have -- it looks like you have a question.

14 THE COURT: Well, I've got some questions. I've seen
15 the factors. I agree that it's one of those issues that it's
16 hard to condense to 500 words. But let me kind of take this
17 bite size, at least, for the time being.

18 It seemed like plaintiffs' first point and request
19 today was an order requiring ZTE to designate -- identify and
20 designate its witnesses on topics within the next seven days.
21 That seems like an easy issue to resolve today.

22 MR. SCHULZ: Right. So, Your Honor, we've designated
23 -- and the reason it's gone back and forth is because of the
24 scheduling. But right now, the three witnesses we have
25 designated are the technical witnesses.

1 As far as the sales and marketing, I believe it's one
2 of the next topics, but the sales and marketing is exclusively
3 done out of ZTE USA, which is a non-party to this suit. So the
4 depositions for ZTE USA would be better suited for a subpoena.
5 And ZTE USA is based in the Northern District of Texas. So
6 that was part of the venue jurisdictional issues.

7 ZTE USA was formerly part of this case, but Judge
8 Albright dismissed them from this venue. So any such discovery
9 should proceed in the Northern District of Texas where there is
10 a parallel suit pending. Because they're a non-party, the
11 proper means for discovery for ZTE USA would be through a
12 subpoena, a Rule 45 subpoena.

13 So we designated the technical witnesses. And then
14 there are some topics that we believe are not relevant. I
15 believe I identified those as Topics 1 through 16 that pertain
16 to ZTE Corporation's IP licensing and monetization, which as
17 far as we can tell, it's not related to any of the grounds, any
18 of the claims, any of the defenses, any of the patents. It's
19 for years 2021 to 2025, so it has -- it doesn't even pertain to
20 the hypothetical negotiation or any of the Georgia-Pacific
21 factors.

22 So as far as we can tell, those topics aren't
23 related, and it doesn't -- we're willing if the Court wants us
24 to designate a witness just to say that these are not relevant
25 for the cases. We're willing to do that. Just keep in mind

1 that we still have all those travel restrictions, so it would
2 be unduly burdensome just to have a witness come to Macau to
3 say that these topics are not relevant to the case because they
4 don't pertain to any of the damages theories. They don't
5 pertain to any of the patents, any of the products themselves.

6 So those are kind of like the three buckets. We have
7 the technology folks, which we have designated. Then there's
8 the sales and marketing folks, which we are directing Brazos to
9 go to ZTE USA for. And then there's this leftover kind of IP
10 monetization group, which we've maintained is not relevant to
11 these cases.

12 THE COURT: Okay. And let me address each of those
13 buckets. And it seems to me, you know, relevance is not an
14 issue for a witness. So it could be an issue for an objection
15 that the Court would then need to address. So I would say if
16 there are topics you think are irrelevant, then -- and you
17 refuse to provide a witness on, you know, I think that's the
18 appropriate way to handle it. And then Ms. Kim can decide
19 whether she agrees or disagrees. And then y'all can bring that
20 to me to resolve as to whether or not it is relevant and you
21 need to put up a witness.

22 And I would say probably the same for ZTE USA. You
23 know, if you just say, look -- and maybe it's not a relevance
24 issue, but you say -- and I'm not sure the legal entity that
25 you've got, but the ZTE entity in this case, yeah, just tell

1 Ms. Kim whether or not you're going to put somebody up and why
2 or why not.

3 So if it's on the sales stuff, I could see based on
4 what you said that it may be a situation where ZTE, the party,
5 has no information and so will not be putting up a witness.
6 And then go see ZTE USA, and then we can discuss that issue.

7 Tell me does -- what's the name of the ZTE party
8 that's in this lawsuit, the entity?

9 MR. SCHULZ: It's ZTE Corporation, Your Honor.

10 THE COURT: Corporation, okay.

11 And I assume they're a U.S. corporation of some
12 state?

13 MR. SCHULZ: ZTE Corporation is the Chinese entity.
14 ZTE USA is incorporated -- well, is a resident of Richardson,
15 Texas in the Northern District of Texas. So ZTE USA is the
16 domestic entity in Richardson, Texas.

17 THE COURT: Okay.

18 MR. SCHULZ: And then ZTE USA is the -- I want to say
19 they're -- I don't recall off the top of my head which city in
20 China they're based out of, where they're headquartered.

21 THE COURT: Okay. So ZTE Corp is a foreign entity?

22 MR. SCHULZ: Correct.

23 THE COURT: Okay.

24 You know, and the only thing that strikes me is if
25 ZTE Corp has control over ZTE USA to the extent that they could

1 require an employee to appear, that's a question that i have.

2 MR. SCHULZ: So that's actually one of the later
3 topics, Your Honor. So there's actually -- I'm going to
4 probably butcher this name -- it's the Gerling case out of the
5 Third Circuit where it analyzes whether the parent has
6 sufficient control over the subsidiary.

7 And first of all, Your Honor, we've already addressed
8 this in the venue briefing, so it was already established that
9 there wasn't sufficient control between the entities. So that
10 already was part of the venue briefing.

11 And then, second, we've actually established that the
12 two Gerling factors, and neither have been addressed by
13 plaintiff Brazos here. So they haven't established that there
14 is sufficient control. In our position, there isn't sufficient
15 control, but they haven't made that case yet or they haven't
16 made that argument.

17 THE COURT: Okay.

18 MR. SCHULZ: And I believe that that might be part of
19 the second dispute chart, Your Honor.

20 THE COURT: Okay. Well, let me --

21 MR. SCHULZ: For today.

22 THE COURT: So going back to the -- at least on the
23 topics, I would like for ZTE to at least identify -- you know,
24 tell WSOU whether or not they're going to provide a witness on
25 each topic and then the basis for why or why not. And then we

1 can address each of those. You know, Ms. Kim can decide which,
2 if any, of those are worth bringing back to the Court's
3 attention and we can address them.

4 I think I know the basis for, you know, whether
5 you're going to get witnesses on licensing issues or sales
6 data. But let's say we'll do that. I'll order you to provide
7 those designations within seven days and just so she knows what
8 you're going to give her a witness on and what you're not going
9 to give her a witness on. And if you're not going to give her
10 a witness on it, the basis for why not. And that we can do
11 without getting into the Hague issues.

12 What about when these technical depositions go or
13 depositions of I'm assuming Chinese nationals, if they go --
14 obviously, going to be through translation -- what about the
15 50-percent increase on depo time strikes me as pretty
16 reasonable?

17 MR. SCHULZ: So we proposed 10 hours, and I believe
18 the 50 percent comes out because it's normally 7 hours. So the
19 50 percent comes out to 10-1/2. So we said 10 hours. And
20 we're not -- it's not a hard cutoff. We just -- that seemed
21 like the round number. We're willing to go further. It's just
22 10 hours was what we normally do for our depositions in Hong
23 Kong for previous depositions with Chinese nationals.

24 THE COURT: Okay. Well, what I'll do -- I'll give
25 the plaintiffs the benefit of the doubt on that one. We'll say

1 10-1/2. It's just 30 minutes. If they get in there and you
2 think there's a lot of time being wasted after the first one
3 occurs, you know, you can bring that to my attention.

4 Similarly, Ms. Kim, if you get in there and if for
5 some reason or another, that's not sufficient time, you can
6 bring that to my attention and we can adjust.

7 All right. Now to the really tough question on these
8 30(b)(6)s is what to do with the witnesses. So are there any
9 ZTE Corp employees stateside?

10 MR. SCHULZ: No, Your Honor. Not that would be for
11 these depositions. So we're focusing on the folks that have
12 the technology understanding. And honestly, I don't believe
13 they even have anyone stateside. So -- but we've investigated
14 where the witnesses are based on the technology topics and the
15 topics in general. And our understanding is they're all based
16 in China.

17 There are a few instances where there might be
18 somebody in Europe, and we've been investigating that too, as
19 well. But at this point, the European individuals won't have
20 much to provide, and they're for different entities, as well.
21 So most of the people with the knowledge that we've been
22 relying on for collecting documents and I believe that pertains
23 to some of the later topics for the interrogatories. A lot of
24 those folks are based in China.

25 THE COURT: Okay. And assuming that the plaintiff

1 has to proceed under the Hague on the depositions, do you have
2 any estimation of how long that would take before the witnesses
3 could be deposed?

4 MR. SCHULZ: Off the top of my head, I do not have an
5 estimation. Honestly, it's more likely that the COVID might --
6 the COVID restrictions might pass before then. But either way,
7 the benefit of the Hague Convention is we work with the China
8 Authority. So the China Authority can also help us with those
9 restrictions. And if they find that there might be an
10 alternative of going to Macau and they can work on some of the
11 COVID restrictions and kind of expedite the process, that's the
12 benefit of working through the Hague is to get the China
13 Authority backing on a lot of these issues. It's kind of like
14 the streamline.

15 THE COURT: Okay.

16 MR. SCHULZ: So it might not be a deposition in China
17 that might take the longer -- that might take longer through
18 the Hague process. But still having the China Authority
19 assistance might help us streamline either Hong Kong and Macau.

20 THE COURT: So like working with the Chinese
21 Authorities, has that process already begun?

22 MR. SCHULZ: Your Honor, as far as we know, the
23 plaintiff is the one who has to initiate that process, and
24 we've been mentioning -- and this, I believe Heather mentioned
25 the deposition notices went out in November. So it's been

1 about roughly six months that we've asked them to proceed
2 through the Hague Convention. So I defer to the plaintiff on
3 whether they've actually proceeded through the Hague process.

4 And that's actually one of the factors. That's
5 factor seven whether the plaintiff has actually attempted the
6 Hague process at all. So if they haven't, then that factor
7 weighs in favor of proceeding with the Hague if they haven't
8 even tried.

9 THE COURT: Okay. And this may be a better question
10 for plaintiff, too, but do you have any idea from prior
11 experience how long it would take to go through the Hague
12 process with China to get a deposition? I mean what kind of
13 delay are we looking at? I know service of process through the
14 Hague sometimes can take months and, in China, I would expect
15 even longer.

16 MS. KIM: Your Honor, we have not initiated Hague
17 proceedings. Hague proceedings have not been required for
18 depositions in Judge Albright's court before. As I noted
19 earlier today, none of the cases even ZTE cites in support for
20 complying with the Hague held that Hague compliance was
21 required. In fact, one of the cases noted that one defendant
22 did go -- of all the cases that went through in 13 years, it
23 was only allowed once.

24 So even if we were able to go through the Hague
25 quickly, I would imagine it's not a quick process. But even if

1 it was quick, there's a 99.9 percent chance that we would be in
2 the same position because they wouldn't let it go forward
3 anyway. And I can share that with you on my screen, Your
4 Honor. This is the case that ZTE had cited. It is the
5 Invictus Power [sic] case that issued in 2021 so just last
6 year.

7 And that's why the Court here in its discretion
8 ordered the parties to take the deposition of this Chinese
9 national in Macau and noted that in the more than 30 years,
10 under the Consular Convention and 13 years under the Hague,
11 China has granted permission for a deposition on only one
12 occasion. And they also noted here, number one, the Hague
13 proceedings will be delayed for approximately seven months or
14 more due to COVID backlog.

15 So we're looking at at least seven months here with
16 the very, very high likelihood that we would be in the same
17 position we are here today.

18 THE COURT: Okay.

19 MS. KIM: I'd also like to note, Your Honor, that we
20 have another case that we represent WSOU on. It's against
21 OnePlus which is another foreign entity in China. And they
22 have made their witnesses available in Macau. They first
23 offered in January, then in April, then this month, then July.
24 And they have not needed to have 60 days. I understand they're
25 also coming from Shenzhen, China, which is probably different

1 than Shanghai. But I don't imagine it being that drastically
2 different.

3 And OnePlus there, we -- they also had given us sales
4 and marketing depositions on a 30(b) (6) basis of their U.S.
5 entity, as well, their subsidiary.

6 THE COURT: Okay.

7 MR. SCHULZ: Your Honor, if I may, on that last
8 point?

9 THE COURT: Yeah. Let me real quick. Ms. Kim, what
10 was that case again? That's WSOU versus who?

11 MS. KIM: OnePlus.

12 THE COURT: OnePlus, okay.

13 MS. KIM: Yes, Your Honor.

14 THE COURT: Go ahead, Mr. Schulz.

15 MR. SCHULZ: So during our last meet and confer with
16 plaintiff, they invited us to reach out to OnePlus to determine
17 how they're proceeding with their deposition. So we reached
18 out to counsel for OnePlus, and they indicated that the
19 witnesses for OnePlus aren't coming from the same city as the
20 ZTE Corporation witnesses are coming from. So they don't have
21 the same issues that I mentioned for Shanghai.

22 Like I said, Shanghai, there's no travel at all to,
23 from. They can't go to Macau. They can't come home. And then
24 Xi'an, they can go to Macau. They'll have to quarantine in
25 Macau for a couple of days, and then the main issue is when

1 they return back to Xi'an is that those weeks of quarantining
2 in Xi'an with -- in the government facility.

3 So our understanding is they don't -- OnePlus doesn't
4 have those same issues. And as Heather indicated, they've
5 tried to coordinate and schedule these depositions three or
6 four times already, and they have something scheduled. It's
7 just -- it keeps getting pushed back. So it has yet to be
8 determined whether OnePlus actually is able to tender its
9 witnesses under the protocols that -- in Macau based off of
10 whatever keeps pushing these depositions.

11 And then, thirdly, I believe Heather indicated that
12 OnePlus was permitting discovery over its domestic entity. I
13 don't know the procedural posture for the domestic entity for
14 OnePlus. I don't know if venue is appropriate, at least for
15 these cases. I do know that this Court has already determined
16 that venue is not appropriate for ZTE USA.

17 So it would be -- in our opinion, we're willing to go
18 in further for those later issues. It would be improper to
19 circumvent the Federal Rules of Civil Procedure, primarily the
20 subpoena process, for non-parties by seeking discovery over ZTE
21 USA when the venue -- when it missed venue here in the Western
22 District of Texas.

23 MS. KIM: Your Honor, if I may note, our
24 understanding --

25 THE COURT: Go ahead, Ms. Kim.

1 MS. KIM: Sure.

2 If I may note, I understand that the OnePlus entity,
3 the U.S. entity, is a wholly-owned subsidiary of the Chinese
4 entity, and that's the same here. ZTE USA is a wholly-owned
5 subsidiary of ZTE Corp in China.

6 THE COURT: Okay. And in WSOU's case against
7 OnePlus, did it require court intervention or did OnePlus
8 voluntarily --

9 MS. KIM: OnePlus voluntarily did so, Your Honor.
10 And we didn't sue OnePlus USA, either. It's always been just
11 the Chinese entity, and we didn't have any dispute on that.
12 They voluntarily did that.

13 MR. SCHULZ: And if I may, Your Honor, the wholly-
14 owned component is not the -- it's the end-all for the
15 analysis. Like I said, the Gerling goes into two factors
16 whether ZTE Corporation has control over the power and the
17 board of ZTE USA. That's one factor. That's not the case
18 here. And even still, plaintiff has not made that argument.

19 And then the next one is if the two businesses are so
20 entwined for the particular process. And, again, that's not
21 the case here. And still, plaintiff has not made that
22 argument. And on top of that, we've had similar arguments in
23 the venue briefing, and it was found that these were two
24 separate entities. And that's why ZTE USA and another
25 subsidiary were dismissed from this case.

1 But -- so the Court has already recognized that the
2 two parties are separate and there was a severance.

3 THE COURT: And that's why I was curious.

4 Ms. Kim, do you agree, I guess, for purposes of the
5 venue ruling that the Court's recognized a distinction, a lack
6 of control of ZTE USA by ZTE Corp?

7 MS. KIM: Your Honor, I don't know if I'm prepared to
8 answer that. I was not involved in the original venue
9 briefing. Maybe Mr. Siegmund knows. But our firm came on
10 afterwards. We only handled the writ of mandamus briefing,
11 which was recently denied.

12 MR. SIEGMUND: And, Judge, just briefly, we didn't
13 really make that argument in the venue briefing. We just tried
14 to show that ZTE USA had a regular and established place of
15 business in this district. And Mr. Schulz is correct that we
16 did not win that fight, but we did not try to show somehow that
17 the corporate severance is for nothing because I don't really
18 know what that would get us.

19 ZTE Corporation is a foreign entity, so venue was
20 always proper. So really the battle was us just trying to
21 establish if ZTE Texas and ZTE USA had a regular and
22 established place of business, and we were not successful in
23 that. And so they were transferred to the Northern District of
24 Texas. But we did not try to make a -- I guess you could call
25 it a veil-piercing argument. We did not make that during our

1 venue briefing.

2 THE COURT: Okay.

3 MR. SCHULZ: If I may, Your Honor?

4 THE COURT: Go ahead, Mr. Schulz.

5 MR. SCHULZ: So that's not exactly clear cut because
6 there was some sort of legal odd question of whether the
7 plaintiff was seeking venue under 1391 even for the domestic
8 entity. So there was kind of a play of how 1391, 1400, the two
9 venue statutes apply to the various entities.

10 Throughout the discovery, the venue discovery, and
11 the subsequent depositions for venue, there was an interplay of
12 how the two entities interacted with each other, where the
13 offices were located, how the employees interacted with each
14 other. So they did dive into this evidentiary component of how
15 -- whether the two entities are intermingled because their
16 legal theories for venue were both 1391 and 1400 for both
17 entities. They didn't separate the legal theories, 1400 for
18 domestic and 1391 for the foreign.

19 So they were applying both statutes, and they were
20 trying to intermingle or at least make a case for mingling,
21 that the two entities were mingled.

22 THE COURT: Okay.

23 MS. KIM: Your Honor, if I may just note the standard
24 -- what I think Mr. Schulz is pointing at here for piercing the
25 veil or the commingling is lower for discovery than it is for

1 venue. I understand it was not raised in venue. The writ of
2 mandamus I'm referring to has to do -- refers to file rule.
3 That was recently denied against ZTE, but the standard, as Your
4 Honor probably is already aware more than I am, is that it is
5 lower for discovery than it is for venue (indiscernible).

6 THE COURT: Okay. Yeah. So at least as far as the
7 control of ZTE USA by ZTE Corp, I think that's probably a
8 better issue to take up once you get full statements on
9 witnesses that will be -- topics the witness will be produced
10 on versus a witness not produced on. And then we can -- you
11 know, that could be a discrete, you know, email dispute, the
12 500-page or 500-word chart.

13 Let me go off the record just for a minute to
14 consider the Hague versus compelling, you know, a witness to
15 travel issue because that's a little trickier, especially right
16 now.

17 So we're going to go off the record just briefly.

18 (Off-the-record bench conference between Court and Law
19 Clerk from 2:09 p.m. to 2:15 p.m.)

20 THE COURT: Okay. So here's what we're going to do
21 with regard to this. I would -- I normally don't like to do
22 this. Normally I like to give you an answer on the spot, but
23 I'm not going to give you an answer on the spot today. What I
24 am going to do is I'm going to ask for briefing on a tight
25 schedule. And unless -- you know, if you want an answer

1 quicker, unfortunately, this is going to put the plaintiffs
2 working over the weekend. But if I could get five pages from
3 plaintiff about why we should order it, order the witnesses to
4 move and legal authority for doing so versus making the
5 plaintiff go through the Hague.

6 If I could get five pages from plaintiff on Monday,
7 and then defendant provide me a five-page response on Thursday,
8 May -- I'm sorry, a five-page response on Friday because this
9 way it will give -- I'm not counting the weekends,
10 unfortunately -- or I am counting the days over the weekend,
11 excuse me.

12 That will give plaintiff four days to write their
13 five-page brief and then give defendants four days to respond.
14 So plaintiff's five pages due on May 16, defendants' response
15 due May 20. And then three days to get a three-page reply from
16 plaintiff on May 23. And we'll call it quits at that point on
17 the issue of the Hague versus the Federal Rules of Civil
18 Procedure. And then I'll get you an answer on that as quickly
19 as possible.

20 I will tell you -- when is fact discovery currently
21 set to conclude?

22 MS. KIM: June 17th, Your Honor.

23 THE COURT: Okay. Yeah, obviously, I'm afraid that's
24 going to have to slide. So I'll give you a warning about that
25 because overriding all of this, of course, is the concerns

1 about the Shanghai lockdown are not lost on me. And so we're
2 going to try and accommodate that regardless of how the issue
3 comes out. But then how much it has to slide will depend in
4 part on the Shanghai lockdown and in part on whether I decide
5 you need to go through the Hague or defendant needs to move
6 their witnesses to Macau for depositions.

7 Okay. So is that clear on the briefing schedule?

8 MS. KIM: Yes, Your Honor.

9 I did have a follow-up question. I understand from
10 ZTE's counsel that they have applied to have their witnesses go
11 to Macau already. Could they produce those applications to the
12 Court and to us so we can see how far along they are in the
13 process? I understand that was done quite some time ago, so
14 they should be issuing, I would imagine pretty soon, the
15 witnesses that have now gotten permission to go to Macau
16 already. And that would factor into our briefing, obviously.

17 THE COURT: Gotcha.

18 Mr. Schulz?

19 MR. SCHULZ: So we said we started the process is
20 what we represented. So that was also for the counsel team,
21 the Finnegan team as well as the witnesses. So we started the
22 process. We call up the local authorities and say, hey, what's
23 the process, can we get this done in three days, the three days
24 quarantine. The local authorities tell us no, we got another
25 spike. And that's just kind of happened every single month.

1 And then on top of that, the witnesses were doing the
2 same thing on their end. So if you want, we can provide that,
3 hey, we called up the local authorities, we have the websites,
4 we can do that if that is what the plaintiff is looking for.

5 THE COURT: Yeah. I don't know what these things
6 look like, whether it's a web app that you fill out or a form
7 that somebody would have a copy of. Do either of y'all know?

8 MR. SCHULZ: Well, like I said, for the witness on
9 the U.S. side, so it's a combination of not only do we have to
10 coordinate with the U.S. government but then also on the local
11 cities. So it's kind of like a two-fold. You have to call two
12 different groups.

13 On the Chinese side, I can get some more information
14 from them, but obviously I don't think they have to deal with
15 the U.S. government on the Chinese side.

16 But, yes, I do believe there is some kind of you call
17 and then they'd call back and then it proceeds -- if it is even
18 possible, it will proceed to a formal paper at some stage. But
19 a lot of these times, they get the response back and say, hey,
20 look, Shanghai is not going anywhere, there's no point of
21 giving you guys an application.

22 MS. KIM: Your Honor, we're not seeking to request
23 any production from counsel. The case law is clear that
24 counsel does not have to go to Macau to prep or defend the
25 depositions. We're seeking just requests that the witnesses or

1 counsel on the witnesses' behalf have sought for permission to
2 go to Macau, which we understand has already been done since
3 this has been ongoing since November and that they've already
4 been denied.

5 I don't know if the denial is by phone call or if
6 there's any kind of paper showing how many times they've done
7 this, how many times they've been denied, how recently they did
8 it. All of that would be I think factoring into our five-page
9 brief due on Monday showing, you know, the balance of federal
10 procedure versus the Hague and what's been done so far
11 procedurally.

12 THE COURT: At least as far as that application and
13 such goes, I don't think I need it for the briefing. So I mean
14 if there is a form that was submitted, fine. If it factors
15 into your briefing, you know, make those arguments and we'll
16 let ZTE respond to it. But I'm -- personally I think my strong
17 assumption is any process that's an alternative to the Hague
18 will be faster than the Hague. So whether or not they've done
19 an application is not really going to affect that.

20 So I'm not going to order production of that
21 information at this time. Now if we get to a point where --
22 because I'm looking at the chart and it says ZTE has already
23 started the COVID travel restriction application process in
24 anticipation of Brazos' completing Hague process. You know,
25 somehow if that gets called into question because of what

1 happens later, we can circle back to it. But at least at this
2 point, I don't see any reason to delve much farther into it
3 than that.

4 MS. KIM: Thank you, Your Honor.

5 THE COURT: Okay. So I'm not going to order you to
6 provide that information, Mr. Schulz. But I will order the
7 parties to provide the briefing as described.

8 MR. SCHULZ: Yes. Thank you, Your Honor.

9 THE COURT: Let's see. The second issue, at least in
10 the chart that I have open, concerns the reasonably similar
11 products. And so do -- it looks kind of like ZTE's -- really
12 ZTE's motion to compel. So let's hear from Ms. Kim or Ms.
13 Dartevelle?

14 MS. KIM: This will be me again, Your Honor. You're
15 just stuck with me for just one more before I pass it on to Ms.
16 Lea.

17 Do you have any questions on this that I can answer
18 for you off the bat, Your Honor?

19 THE COURT: No. No, I do not.

20 MS. KIM: Okay. So discovery -- it's widely known
21 and case law that discovery is not necessarily limited to only
22 the limited set of products that are specifically identified in
23 the infringement contentions. Broad discovery dictates that
24 discovery into other products that operate in a reasonably
25 similar manner are also fair game as long as defendant is on

1 notice of what our specific invention theories are by virtue of
2 the infringement contentions.

3 Each of the products that we have in Exhibit C, Your
4 Honor, I think -- I hope you have that exhibit available. I
5 think it's titled "429 Exhibit C" for Brazos. All of those
6 products operate in a manner reasonably similar to specific
7 infringement theories that have already been disclosed to ZTE.
8 Our final contentions, I believe, were served in June of last
9 year, which is well before we had the benefit of discovery,
10 particularly source code discovery which we just got pursuant
11 to a hearing on March 3rd. So we've only had very limited
12 access recently to source code.

13 And I'd like to note here, Your Honor, that ZTE has
14 never moved to strike our motion to -- our preliminary
15 infringement contentions or our final contentions. So in our
16 mind, those are sufficient. They have put ZTE on sufficient
17 notice of what our specific infringement theories are. We
18 then, after being able to look at source code a little bit and
19 go through the limited documents that we have, we noticed that
20 vast series of products were not in the protection of source
21 code or discovery.

22 So after being able to look at it in March, we asked
23 on April 7th to get this discovery on, you know, several of the
24 products that are reasonably similar. They gave us a list of
25 those that they say are not reasonably similar or, you know,

1 not sold in the U.S. We then narrowed the list which is what
2 you have in front of Your Honor as Exhibit C.

3 And they're still refusing to give us discovery on
4 that even though they don't dispute that they do not operate in
5 a reasonably similar manner as those they've already accused
6 and set forth specifically in our infringement contentions.

7 THE COURT: Okay. Mr. Schulz, will you be responding
8 on the reasonably similar products issue?

9 MR. SCHULZ: I will, Your Honor.

10 First of all, addressing the last point, we have made
11 the case that these are reasonably similar products. And it's
12 not only in our chart, but it's also in letters. As far as --
13 so my full response is two-fold. So the Court has already
14 addressed -- Judge Albright has already addressed Brazos'
15 standard of similar products in the OnePlus case. And then,
16 secondly, there's also a time component to this.

17 So as Heather indicated, they served their final
18 infringement contentions, it was actually on -- in July of
19 2021. And they didn't provide this list of similar products
20 until April, last month, and it's almost double, sometimes --
21 arguably, it's triple the current list of accused devices. So
22 roughly two months before the close of fact discovery, they're
23 trying to double and triple the amount of devices for
24 discovery.

25 But back to that first point of the actual standard

1 for similar products. So their theory, the way I understand
2 it, is the products that they're trying to add are similar
3 because of the same operating system and the compliance with
4 standards like IEEE and Etsi, those kind of standards.

5 So the Court has already addressed the compliance
6 with the standards in the OnePlus. It's WSOU Investments v.
7 OnePlus Technology, Case 6:20-CV-00952, Docket 77. And in that
8 case, Judge Albright found that Brazos' understanding of
9 similar products was too broad. It's not specific enough. And
10 just merely identifying either Qualcomm Snapdragon chip set or
11 compliance with 3G, 4G, 5G standards or whether it's an LTE or
12 an LTE-A, those kind of criteria weren't sufficient for
13 identifying similar products, especially when Brazos refuses to
14 identify or deny or confirm whether these patents are standard
15 essential patents.

16 Now we've been asking for months, almost since the
17 beginning of the case whether any of these patents are standard
18 essential patents. And they refused to confirm, deny. So this
19 has already been addressed in the OnePlus case in the situation
20 where Brazos refuses to identify whether these are standard
21 essential patents. Therefore, relying on compliance with
22 standards is improper to determine whether there are similar
23 products.

24 And that also applies to the source code. A lot of
25 these devices, they run third-party Android -- third-party

1 Google Android operating software. So when you start looking
2 at any device that runs the Android operating software and its
3 compliance with these certain IEEE and Etsi standards, this
4 just goes beyond ZTE products. This is almost the entire
5 industry.

6 So this criteria is not appropriate for identifying
7 whether the products are sufficient -- similar or not. It
8 needs to be narrowed down to determine whether the products are
9 similar or not. They need to provide more guidance that is
10 actually based on the claim elements for each of the patents.
11 It can't just be based on standards, especially when the
12 plaintiff is unwilling to identify whether these are standard
13 essential patents.

14 And then, lastly, I briefly mentioned the time
15 component. Like I said, they served their final infringement
16 contentions in July of 2021. And they haven't provided a basis
17 why it took them almost nine months to add an additional two
18 times or three times the set of accused devices that they want
19 additional production on two months before close of fact
20 discovery.

21 MS. KIM: Your Honor, may I respond --

22 THE COURT: Certainly.

23 MS. KIM: -- or do you have a question for Mr. Schulz
24 before I respond?

25 THE COURT: Pardon? I think it's to you, Ms. Kim.

1 MS. KIM: Okay. I didn't know if you had a question
2 for Mr. Schulz before you wanted me to respond.

3 First of all, on OnePlus, OnePlus is a completely
4 different situation than here. We're actually counsel for
5 OnePlus. That had to do with OnePlus' motion to strike our
6 preliminary infringement contentions. That's not at issue
7 here. ZTE, as I noted, had never moved to strike our
8 infringement contentions preliminary or otherwise.

9 OnePlus is also a different set of patents. And in
10 OnePlus, I don't recall off the top of my head, I wasn't the
11 technical lead on that team, but in this case, none of the
12 patents, as Mr. Schulz knows, have been declared standard
13 essential. And in any case, there's no prejudice to ZTE giving
14 us discovery on reasonable products which we didn't -- where we
15 weren't able to figure out whether they were reasonably similar
16 or not until we got access to discovery in their source code,
17 which we didn't get access to until March.

18 And so we got a court order on March 3rd saying they
19 had to give us source code. We then started looking at source
20 code. And on April 7th, we identified a bunch of products that
21 we don't have discovery on that operate in the same way as
22 those that are already set forth specifically on our
23 contentions which ZTE does not dispute are sufficient.

24 THE COURT: Okay. So and I guess --

25 MR. SCHULZ: Your Honor, if I may real quick because

1 --

2 THE COURT: Hold on. Just let me make sure I'm up to
3 speed on what we're talking about here. So I'm looking at --
4 let me see -- so I'm looking at one of the charts. We've got
5 Issue 2. Well, and I've got both the Exhibit C, which I've got
6 open in front of me, that has a chart of products that's titled
7 "Brazos Proposed Preliminary List Reasonably Similar Products
8 As Of April 28." And then there's also the concept, I guess,
9 of saying -- I lost it in my stack of stuff here -- but
10 reasonably similar products being ones that implement a
11 specific IEEE standard.

12 So what's ZTE's position -- there it is. What's
13 ZTE's position on Exhibit C, the list of products that are
14 there, other than I understand the delay argument? But aside
15 from the delay argument, what --

16 MR. SCHULZ: Yes.

17 THE COURT: Go ahead.

18 MR. SCHULZ: To clarify, because there are two
19 Exhibit Cs. So are you referring to the one that says "As of
20 April 28th, 2022" at the top?

21 THE COURT: Yes.

22 MR. SCHULZ: Okay. Well, as I indicated, if there's
23 a compliance with an Etsi or an IEEE standard, we've been
24 asking for their designations of whether these are standard
25 essential patents. And that does play into if they're standard

1 essential, then that changes whether a product is
2 representative or not. If they're not -- and that's part of
3 the OnePlus case.

4 Judge Albright actually indicated that if the -- the
5 list of products was not specific enough, particularly given
6 Brazos' unwillingness to confirm or deny that the asserted
7 patents are standard and essential. And the Court went on, if
8 the patents are not standard and essential, Brazos must provide
9 analysis indicating why the highlighted information is indeed
10 representative.

11 So the "standard and essential" actually plays into
12 whether these standards apply and basically render the accused
13 products and the additional products similar or not. So that's
14 part of the criteria.

15 And then as far as Chart C, if you look through a lot
16 of these, a lot --

17 THE COURT: I'm sorry. Did you say D or C?

18 MR. SCHULZ: C. C. Chart C, right, with --

19 THE COURT: Charlie?

20 MR. SCHULZ: Charlie, correct.

21 THE COURT: Okay.

22 MR. SCHULZ: "As of April 28th, 2022" at the top.

23 Okay. If you note, Your Honor, a lot of these are
24 mobile devices smartphones. And in terms of operating
25 software, that's third-party Google Android operating software.

1 So for plaintiff to rely on the source code review,
2 we haven't produced Android operating software because that's
3 not ours to produce. They have to go to Google for that. So
4 to allege that this is based off of some source code review is
5 not entirely rooted in what these additional products are that
6 they're trying to add for discovery.

7 And, like I said, if that's the criteria, then that's
8 basically the entire industry because it's either an Android
9 Google operating software or it's an Apple operating software.
10 The bulk of these additional products are running Android
11 operating software. So that can't alone -- that alone can't be
12 the criterial for identifying similar products because that's
13 the entire industry.

14 And you combine that with the compliance, there needs
15 to be some more specific details of how we separate, how we
16 figure out what's a similar product and what's not a similar
17 product.

18 THE COURT: Well, at least figuring out -- the
19 plaintiffs have told us specifically which ones they think are
20 similar on Exhibit Charlie, as I see it. The second question
21 about the IEEE standard and the industry standard seems -- that
22 seems like sort of a secondary issue. And I understand you're
23 saying -- just saying that it complies with the standard and,
24 therefore, is reasonably similar when they haven't
25 characterized these as standard essential patents.

1 I understand what you're saying there. I understand
2 it to be addressed more towards the I'll say nebulous world of
3 "reasonably similar products," as opposed to Exhibit C looks
4 like they've at least -- plaintiff feels like they've got some
5 basis to say the items on Exhibit Charlie are reasonably
6 similar to what they've accused and included in their
7 infringement contentions and are not relying on the IEEE
8 standard compliance alone to get there.

9 MR. SCHULZ: Well, Your Honor, based off of their
10 briefing, they based it off of operating system and compliance
11 with the standards. So if it's not the IEEE, then like I said,
12 it's based off of -- as an operating system. And once again, a
13 lot of these devices are Android operating systems. So there
14 needs to be some other criteria. They need to give us some
15 other criteria of how they're identifying these as similar
16 products because they first provided this list in the beginning
17 of April. So how were we supposed to know these were similar
18 products because they're basically asking for any Android
19 phone?

20 MS. KIM: Your Honor, I just want to note that the
21 IEEE standard, that is only in some embodiments. It's not all
22 products. And like Your Honor has noted, we're not asking for
23 a whole universe of any product that runs Android, whether it's
24 a ZTE phone or not. Currently, we've narrowed our list based
25 on (indiscernible) ZTE to just those in Exhibit C which in the

1 dispute chart that ZTE put together, they don't dispute that
2 they do not run in a reasonably similar manner to the
3 infringement theories already disclosed in our infringement
4 contentions.

5 MR. SCHULZ: And, Your Honor, they haven't provided a
6 basis for why these are similar products beyond they all have
7 the same operating system and run the -- and when I say
8 standard, it's not limited to IEEE. I believe there's several
9 IEEE standards in its patents, and there's also some Etsi --
10 there's a whole bunch of other standards, I believe. But those
11 are just the two I remember from my engineering days, so I
12 recognize those.

13 But those aren't the only standards involved here.
14 So when I say compliance with standards, it's not limited to
15 just those two. But that's the only two basis that they
16 provided us for this list, and as far as I can tell, there's
17 actually no similarities other than they run the same operating
18 system. And as I already argued, that's not a basis for why
19 they're similar. That's not a sufficient basis. That's too
20 broad.

21 MS. KIM: Your Honor, I can share a document, but it
22 is confidential, so we'll have to ask the public attendees to
23 leave, if you're interested in seeing where in our infringement
24 contentions we've disclosed this.

25 THE COURT: Well, I tell you what, why don't you do

1 this. Can you email the document and --

2 MS. KIM: Yes, Your Honor. I actually have them, and
3 they are highlighted, as well, the points I was going to show
4 you. So let me just ask our paralegal to shoot those over to
5 you really quick. What is your email, Your Honor?

6 THE COURT: Sure. And on this one, Mr. Tong is
7 working on it. So it's --

8 MS. KIM: Oh, we have his email. We have Mr. Tong's
9 email.

10 THE COURT: Okay. I was going to say I'll have him
11 put it in the chat if you don't already have it. There it is.

12 MR. SCHULZ: In the meantime, if I may, Your Honor,
13 there's still the time component. Like I said, a lot of this
14 is Android-based. That's not dependent on the source code
15 review, so there's still a lack in explanation for why the
16 final infringement contentions were served in July 2021, and
17 it's been now almost nine months for them to identify these
18 products.

19 If it's based off of an Android operating system,
20 they could have done this before even filing the suit. So
21 there's no explanation of the delay and the burden on ZTE.

22 THE COURT: Well, I appreciate it. I was kind of
23 smiling because a minute ago, you were saying we needed more
24 time.

25 MR. SCHULZ: Well, we will need more time --

1 THE COURT: I understand.

2 MR. SCHULZ: -- with the close of fact discovery.

3 THE COURT: I understand.

4 MR. SCHULZ: Like if you do want us to collect this
5 information, it's almost double or triple the amount, and
6 that's the undue burden on us. It's going to take us time to
7 collect this, and fact discovery is closing in two months. I
8 know you indicated that you might push that close of fact
9 discovery, but it's still an undue burden on us. They've
10 waited almost two years after the start of the suit to raise
11 these when as far as I can tell, it's based off of Android
12 operating system. So I don't know why they couldn't have
13 raised this earlier in the suit.

14 THE COURT: I understand. I understand your point on
15 that. And have you emailed the document yet, Ms. Kim, or --

16 MS. KIM: I am about to hit send. It's just I need
17 to click one more thing. It's almost there. It should be
18 coming through any moment now.

19 MR. SIEGMUND: Judge, would you like me to address I
20 guess you could call it the "delay" in getting these reasonably
21 similar products identified because I mean I think it's --
22 okay.

23 THE COURT: I don't really need it. I appreciate it,
24 Mr. Siegmund, but I'll tell you I'm not -- if I decide that's
25 going to weigh in my decision, then I'll give you the

1 opportunity to address it. But as I sit here now, it doesn't
2 really affect it.

3 MR. SIEGMUND: Understood, Judge. Thank you.

4 (Pause)

5 THE COURT: And I believe our pause right now is as
6 we wait for the document to come through.

7 MS. KIM: I'm CC'd on it. And they come from
8 (indiscernible).

9 THE COURT: Okay. Good deal. Hold on just a --

10 MS. KIM: And Opposing Counsel, I just put it on the
11 same chain as the hearing being set, so hopefully everyone has
12 it.

13 THE COURT: All right. I tell you what, while we're
14 waiting on that, we're going to go off the record just real
15 quick to --

16 (Recess at 2:40 p.m./Reconvened at 2:42 p.m.)

17 THE COURT: Okay. We're back on the record. I think
18 we've gotten an email from Ms. Kim that has -- it looks like
19 one, two, three, four -- six attachments. Am I counting that
20 right? Okay.

21 MS. KIM: Yes, Your Honor.

22 THE COURT: Okay. Okay.

23 All right. So go ahead and explain to me what you
24 wanted to explain with regard to these.

25 MR. SCHULZ: Your Honor, I haven't received it yet.

1 MS. KIM: Oh.

2 THE COURT: It's a big file, so --

3 MR. SCHULZ: So maybe, Heather, if you don't mind
4 sharing the screen, would that work or --

5 MS. KIM: I think we're not doing that because --

6 THE COURT: We've got public attendees.

7 MR. SCHULZ: Okay. Right.

8 MS. KIM: Right.

9 THE COURT: Yeah.

10 (Pause)

11 MS. KIM: Bradford, if you have our final
12 contentions, I can direct you to the chart and the page if you
13 have them.

14 MR. SCHULZ: Okay. The first chart?

15 MS. KIM: The first chart, I'll just go through as an
16 example.

17 Your Honor, would you like me to cover all six of the
18 charts or just a couple?

19 THE COURT: Just give me one example, yeah. And I
20 will note that none of mine say first chart, so I need you to
21 tell me which patent. It's got Claim Chart '232 patent, '495
22 case, that sort of thing.

23 MS. KIM: Yeah. For example, the claim chart, this
24 one's '060 patent '493 case.

25 THE COURT: Got it.

1 MS. KIM: And then Exhibit C, which is the chart I
2 was sharing with you earlier, Your Honor, this is for the
3 smartphones including the ZTE -- maybe it would help to share
4 that, but it's the Nubia, the Blade Z, Grand, other phones of
5 that nature.

6 And if we look on Page 1 of that particular chart,
7 the highlighted language there says, "ZTE provides mobile
8 devices" -- well, I won't say it, sorry. I can't say it because
9 of the public Zoom hearing, but it's the first --

10 THE COURT: I see it.

11 MS. KIM: Yeah. The very last paragraph there. And
12 then Figure 1. And so the infringement contentions and the
13 theories disclosed there are that each of the smartphones can
14 act as the mobile device running on Android OS and provides a
15 feature to synchronize the data between any two ZTE devices.
16 And that's an example of one.

17 Oh, sorry, one second. Each of these smartphones --
18 I was reading the wrong one. Each of these smartphones
19 provides the Enhanced Voice Services or EVS functionality
20 following the 3GPP Etsi voiceover IP standard, as an example.

21 THE COURT: Okay. So what I'm going to do is at
22 least from what I've seen, from what I've heard, my evaluation
23 of it, I think the chart, Exhibit C, is titled "4.29 Dispute
24 Brazos EX.C-Reasonably Similar Products List," and the document
25 itself says -- is titled "Brazos Proposed Preliminary List

1 Reasonably Similar Products As of April 28, 2022."

2 I am going to require production of information
3 related to the products on that list. The more general
4 description of "reasonably similar products" is from the
5 Court's perspective unworkable for enforcement purposes. So if
6 you identify more specific products, you know, we can address
7 those. But -- and now my computer's locking up.

8 We can address those, but I'll deny it with regard to
9 the more general descriptor of reasonably similar products.
10 But I will grant the plaintiff's requested relief and require
11 production of documents related to the products on Exhibit C.

12 And my Word application has locked up on me, so I'm
13 not sure what our next topic would be.

14 Yeah. Why don't we do this, we're going to take a
15 recess just real quick so we could take a quick break. And
16 hopefully by the time we get back -- point me to what you think
17 the next topic will be. Hopefully by then, I can get my
18 computer unlocked and also take care of some other stuff real
19 quick during the recess.

20 MS. KIM: Your Honor?

21 THE COURT: Oh, there we go. Let's do this. Ms.
22 Copp once again reminded me of how awesome she is at her job to
23 say let's take a 15-minute recess and then let's log back on on
24 the private link. And we'll get that emailed out to everybody
25 during the recess.

1 All right? So we'll be back on. I've got 2:47
2 Central Time, so we'll be back on at 3:05 Central Time, roughly
3 15 minutes from now. And we'll finish this up.

4 MS. KIM: Thank you, Your Honor.

5 MR. SCHULZ: Thank you, Your Honor.

6 (Recess at 2:47 p.m./Reconvened at 3:09 p.m.)

7 (The sealed portion of the proceedings which took place
8 from 3:09 p.m. to 3:56 p.m. are contained in a separate
9 transcript that is filed on the docket under seal.)

10 || * * * * *

C E R T I F I C A T I O N

16 I, DIPTI PATEL, court approved transcriber, certify
17 that the foregoing is a correct transcript from the official
18 electronic sound recording of the proceedings in the above-
19 entitled matter, and to the best of my ability.

21 || /s/ Dipti Patel

22 || DIPTI PATEL, CET-997

23 || LIBERTY TRANSCRIPTS

DATE: May 19, 2022